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10/092,878	03/06/2002	Michael R. Schramm		2526

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EXAMINER

LAMB, BRENDA A

ART UNIT

PAPER NUMBER

1734

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/092,878

Applicant(s)

SCHRAMM, MICHAEL R.

Examiner

Brenda A. Lamb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 9/22/2005 & 1/09/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 46 is/are allowed.
- 6) ☒ Claim(s) 21-45 and 47-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 22, 34-39, 40-45 and 47-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The examiner maintains that the originally filed specification fails to teach or suggest that the container is comprised of a non-annual funnel connected to an opening

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in a wall of the container and wherein the funnel axis is defined as running substantially from the center of the opening in the wall to substantially the center of an opening in the funnel located within the container, and wherein a cross-sectional shape of the funnel in a position substantially normal to the funnel axis defines a cross-sectional shape having a first breadth dimension and a second breadth dimension and wherein the first breadth dimension is greater than the second breadth dimension.

The term "non-annular" term is so broad that it reads on a variety of configurations other than one having a annular or circular cross-section and these configurations would include those that are not disclosed by the originally filed specification such as funnel having a square-shaped cross-section. Further, it is noted with respect to applicant argument's that his drawings clearly show that his funnel forms the shape of extruded ellipse and therefore supports claim language that a first breadth dimension is greater than the second breadth dimension. The recitation that a first breadth dimension is greater than the second breadth dimension does not limit the shape of the funnel to an ellipse since the first breadth dimension and the second breadth dimension as claimed are not required to pass through the funnel axis and can in fact read on a figure with a circular cross-section since a cord which defines a given breadth dimension that does not pass through the funnel axis can have different lengths.

The originally filed specification fails to teach or suggest a non-edible utensil from the following group of utensils consisting of a spoon, pair of tongs, a straw and a device for dipping eggs. For example, utensils such a spoon or spooning device and straw may

be entirely edible as taught by Price 3,840,678 (see Figures 3-4) and Fowler at column 1 line 55.

The originally filed specification fails to teach or suggest a discrete unit of liquid dye concentrate and such discrete unit of liquid dye concentrate defines a colorant pill having a liquid dye concentrate enclosed within a liquid soluble capsule.

If applicant disagrees then he needs to point out support in the specification and/or drawings for a discrete unit of liquid dye concentrate and discrete unit of liquid dye concentrate defining a colorant pill having a liquid dye concentrate enclosed within a liquid soluble capsule.

The originally filed specification fails to teach or suggest a device for dipping eggs constructed from formed wire having a handle portion and an open loop portion.

If applicant disagrees then he needs to point out support in the specification and/or the drawings for a device for dipping eggs constructed from formed wire having a handle portion and an open loop portion.

The originally filed specification fails to teach or suggest at least one utensil having a substantially elongated handle portion and an open loop portion.

If applicant disagrees then he needs to point out support in the specification and/or the drawings for at least one utensil having a substantially elongated handle portion and an open loop portion.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-22, 24-28,30-34,36-45 and 47-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over under the combination of Law in view of Schramm 5,246,046, Great Britain 1,428,356 (Hunter), Martindale, Price 3,840,678 and Japan 11-227388.

Schramm '046 teaches a kit comprising a container designed to prevent spilling of flowable material contained therein, the container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and an exterior of the container, at least one utensil at least partially removably contained within the container, the utensil having a substantially elongated handle portion and an open loop portion, and liquid matter removably contained within the container.

Hunter teaches a kit comprising the combination of a container designed to prevent spilling of flowable material with a flowable material therein, wherein the flowable material can comprise a liquid, paint, or a granular material. Hunter teaches the container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and an exterior of the container. Hunter teaches a discrete amount or upper fixed amount of liquid is contained in the container in order to prevent spillage therefrom.

Japan '388 teaches a kit comprising the combination of a container and a colorant, coloring liquid, contained within the container and a utensil, brush 8, being colored with the colored liquid wherein the container having an inner cavity, and exterior, an opening in a wall of the container and a funnel connected to the opening to provide communication between the inner cavity and the exterior of the container. Note Japan '388 also teaches the invention may include the combination of a drinkable liquid and a straw.

Martindale teaches the design of a kit comprising the combination of a container and flowable material, a granular or powdered dye/colorant, contained within the container wherein said container includes an inner cavity, an exterior, an opening in a wall of the container and a funnel connected to the opening to provide communication between said inner cavity and the exterior of said container. Martindale teaches a discrete amount or upper fixed amount of powder is contained in the container in order to prevent spillage therefrom.

Price teaches a kit comprising a container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and exterior of the container and an edible article, bread stick 26, and a non-edible utensil or spoon 32 removably contained within the container. Price teaches every element of the kit set forth in claim 49. With respect to claims 34 and 39, the Price non-edible utensil or spoon as shown in Figure 7 is at least partially removable from the container. Further, Price teaches the container resists spillage of discrete amount or fixed amount of the non-gaseous fluid contents or the edible matter or fluid food within the container when the container is oriented in any orientation.

Law teaches egg dyeing using a kit egg dyeing kit which uses the combination of a colorable non-utensil workpiece, an egg, at least one non-edible utensil (egg ladle and a brush), a colorant and a container. Law also teaches the mess associated with the egg dyeing process which occurs as a result of the spillage of the flowable materials contained within the container.

As evidenced by Schramm, Hunter, Japan '388, Price and Martindale, it is known to provide containers with a funnel that are connected to the opening of the container so as to provide communication between the inner cavity and the exterior of the container in order to prevent spillage of flowable non-gaseous material (solids or liquids). Therefore, it would have been obvious to one of ordinary skill in the art to substitute the container in an egg dyeing kit such as disclosed by Law with another container having a funnel that are connected to the opening of the container so as to provide



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communication between the inner cavity and the exterior of the container such as taught from the combined teaching of Schramm, Hunter, Japan '388, Price and Martindale since the combined teaching of Schramm, Hunter, Japan '388, Price and Martindale as discussed above teaches that such container prevent spillage of flowable non-gaseous material therefrom and especially in view of the disclosure of Law of the problems of associated with the spillage of the flowable material from the container of the egg dyeing process. Thus, claims 21-22, 28, 27, 33, 34, 39, 40, 45 and 49 are obvious over the above cited combination of references. Further, absent the new matter, claims 47-48 are obvious over the above cited combination. In any event, if applicant points out support for the non-annular opening, it would have been an obvious matter of design choice to provide the opening of the container in the Law egg dyeing kit as modified with a shape with the scope of the claims 47-48 dependent on end use requirement of the kit (see *In re Dailey*, 149 USPQ 47). With respect to claim 41, although Law fails to disclose his kit includes a colorant pill within the scope of recited claim, it would have been obvious given the modifications of the Law kit as discussed above to use any to With respect to claims 50-51, Law shows the utensils in the kit include an egg ladle or wire egg dipper. Law teaches an egg ladle or wire egg dipper includes a substantially elongated handle portion and open loop portion. With respect to claim 25, 31, 37 and 43, Schramm, Japan '388 and Martindale each teach constructing the container from a plastic material. The method of forming the container from plastic in the form of a sheet is not germane to issue of the patentability of the device/container itself. Therefore, this limitation has not been given patentable weight. With respect to claims 24, 30, 36 and

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42, Schramm, Japan '388 and Martindale each show in their Figures that the container is comprised of a first and second member. Schramm, Japan '388 and Martindale each show the container having a first member which is detachably engagable to the second member which is obviously at least partially sealingly engageable with the second member in order to prevent leakage of the contents from the container. With respect to claims 26, 32, 38 and 44, absent how the flow channel relates to other structural elements of the container especially, the funnel of the container, the wall of the container below the funnel and including the funnel of the Schramm, Hunter, Japan '388 and Martindale container can serve as a flow channel.

Claims 23, 29 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over under Law in view of Schramm 5,246,046, Great Britain 1,428,356 (Hunter), Price 3,840,678, Martindale and Japan 11-227388 in further in view of Lintvedt.

Law, Schramm, Hunter, Price, Japan '388 and Martindale are applied for the reasons noted above but fails to teach the container is a transparent container. However, it would have been obvious to modify the Martindale container to construct it from a material that is transparent but obvious to do so for the advantages taught by Lintvedt of using a transparent container - enables the user to discern characteristics of the contents within the transparent container such as color.

In response to applicant's argument that providing the funnel with a non-annular shape is counterintuitive the following rejection is set forth below:

Claims 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over under the combination of Law in view of Schramm 5,246,046, Great Britain 1,428,356

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(Hunter), Price 3,840,678, Martindale and Japan 11-227388 and if necessary, McShane 4,967,687.

Law, Schramm, Hunter, Price, Japan '388 and Martindale are applied for the reasons noted above but each fail to teach the funnel is non-annular. However, as discussed above, it would have been an obvious matter of design choice to provide the opening of the container in the Law egg dyeing kit as modified with a shape with the scope of the claims 47-48 dependent on end use requirement of the kit (see *In re Dailey*, 149 USPQ 47) and, if necessary, McShane teaches as shown in Figure 1 providing the through opening of a device for dyeing eggs with a non-annular opening which reads on shape as set forth in claim 48 for the obvious advantage of facilitating the insertion of the egg into the container.

Claims 34, 36, 38-39 and 47-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Price 3,840,678.

Price teaches a kit comprising a container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and exterior of the container and an edible article, bread stick 26, and a non-edible utensil or spoon 32 removably contained within the container. Price teaches every element of the kit set forth in claim 49. With respect to claims 34 and 39, the Price non-edible utensil or spoon as shown in Figure 7 is at least partially removable from the container. Further, Price teaches the container resists spillage of non-gaseous fluid contents of the container when the container is oriented in any orientation. With respect to claim 38, absent how the flow channel

relates to other structural elements of the container, the cylindrical wall of the Price base 12 can serve as a flow channel. With respect to claim 36, Price shows the container as shown in Figure 2 comprised of a first member and second member wherein the first member is sealingly and detachable from the second member. With respect to claims 47-48, Price teaches a kit comprising the following combination of elements: a container; edible matter 20; and a non-edible utensil 32. As discussed above, the Price container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and exterior of the container. Thus, absent the new matter, Price teaches every element of the claimed kit.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over under Price 3,840,678 in view of Lintvedt.

Price is applied for the reasons noted above but fails to teach the container is a transparent container. However, it would have been obvious to modify the Martindale container to construct it from a material that is transparent but obvious to do so for the advantages taught by Lintvedt of using a transparent container - enables the user to discern characteristics of the contents within the transparent container.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over under Price 3,840,678 in view of Schramm 5,246,046.

Price is applied for the reasons noted above but fails to teach the container is a formed plastic sheet. However, it would have been obvious to use as the material of construction of the Price container a formed plastic sheet since Schramm teaches the

use of plastic as a material for construction of a container which contains edible matter. The method of forming the container from plastic in the form of a sheet is not germane to issue of the patentability of the device/container itself. Therefore, this limitation has not been given patentable weight.

Claims 40-42 and 44-45 are rejected under 35 U.S.C. 102(b) as being anticipated by McCombs 1,254,714.

McCombs teaches a kit comprising a container and a paint which reads on a colorant as defined by The American Heritage Dictionary of English Language, Second Ed. 1982, "something, especially dye, pigment, ink or paint, that modifies the color of something else". McCombs teaches the container has an inner cavity and an opening in a wall of the container and a funnel connected to the opening to provide communication between the inner cavity and the exterior of the container. Absent the new matter, McCombs teaches every element of the kit set forth in claims 40-41. With respect to claim 45, McCombs container resists the spillage of non-gaseous fluid contents of said container when said container is oriented in any orientation (page 1 lines 101-110). With respect to claim 44, absent how the flow channel relates to other structural elements of the container, the cylindrical wall of the McComb base/body 1 can serve as a flow channel. With respect to claim 42, McComb container is comprised a first member and a second member and wherein the first member is sealingly and detachably engageable to the second member as shown in Figure 4.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over under McCombs 1,254,714 in view of Schramm 5,246,046.

McCombs is applied for the reasons noted above but fails to teach the container is a formed plastic sheet. However, it would have been obvious to use as the material of construction of the McCombs container a formed plastic sheet since Schramm teaches the use of plastic as a material for construction of a container which contains edible matter. The method of forming the container from plastic in the form of a sheet is not germane to issue of the patentability of the device/container itself. Therefore, this limitation has not been given patentable weight.

Claims 40 and 43-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Martindale.

Martindale teaches the design of a kit comprising the combination of a container and colorant contained within the container wherein said container includes an inner cavity, an exterior, an opening in a wall of the container and a funnel connected to the opening to provide communication between said inner cavity and the exterior of said container, and wherein said colorant defines a predetermined quantity of colorant powder in the container. Absent the new matter, Martindale teaches every element of the claimed kit as set forth in claim 40. With respect to claim 45, Martindale teaches the container resists the spillage of non-gaseous fluid contents of the container when the container is oriented in any orientation. With respect to claim 43, Martindale teaches the container is made from a plastic material. The method of forming the container from plastic in the form of a sheet is not germane to issue of the patentability of the device itself. Therefore, this limitation has not been given patentable weight. With respect to

claim 44, absent how the flow channel relates to other structural elements of the container, the cylindrical wall of the Martindale side wall forms a flow channel.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over under Martindale.

Martindale is applied for the reasons noted above. Martindale shows in his Figures that the container is comprised of a first and second member. Martindale first member is detachably engagable to the second member and further is obviously at least partially sealingly engageable with the second member in order to prevent leakage of the contents from the container.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over under Martindale in view of Lintvedt.

Martindale is applied for the reasons noted above. Martindale fails to teach the container is a transparent container. However, it would have been obvious to modify the Martindale container to construct it from a material that is transparent but obvious to do so for the advantages taught by Lintvedt of using a transparent container - enables the user to discern characteristics of the contents within the transparent container such as color.

Claim 46 is allowed.

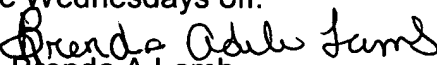
Applicant's arguments filed 1/09/2006 have been fully considered but they are not persuasive.

Applicant's argument that Law fails to provide for a egg container that prevents spillage problem in egg container is found to be non-persuasive. First of all, it is noted

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that only dependent claims 27,33,39 and 45 and independent claim 46 positively claim that the container resists spillage of non-gaseous fluid contents of the container when the container is oriented in any orientation while the vast majority of the claims do not. Law is not applied to teach a spill-proof container. Law teaches an egg dyeing kit is comprised of the following elements: a colorable non-utensil workpiece, an egg, at least one non-edible utensil (egg ladle and a brush), a colorant and a container. Law also teaches the mess associated with the egg dyeing process which occurs as a result of the spillage of the flowable materials contained within the container. Therefore, it would have been obvious to one of ordinary skill in the art to substitute the container in an egg dyeing kit such as disclosed by Law with another container having a funnel that are connected to the opening of the container so as to provide communication between the inner cavity and the exterior of the container such as taught from the combined teaching of Schramm, Hunter, Japan '388, Price and Martindale since the combined teaching of Schramm, Hunter, Japan '388, Price and Martindale as discussed above teaches that such container prevent spillage of flowable non-gaseous material therefrom and especially in view of the disclosure of Law of the problems of associated with the spillage of the flowable material from the container of the egg dyeing process.

Any inquiry concerning this communication should be directed to Brenda A. Lamb at telephone number (571) 272-1231. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday with alternate Wednesdays off.

  
Brenda A Lamb  
Examiner  
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